IN THE HIGH COURT OF JUDICATURE ,CHHATTISGARH AT BILASPUR (C.G.)

W.P. No. ...4290..../2005 .

Peritioner :- 1. Surendra Kumar Benet aged aboute 68 years S/o Late Adgar Benet R/o Takhatpur Dist. Bilaspur (C.G.)
2.(a)Smt. Savitri Benet aged aboute 68 years W/o Late Shri W.J.Benet
(b) Mukul Sondeep aged aboute 40 years
(c) Namrata Benet aged aboute 38 years
(d) Veenu Avim Benet aged aboute36 years from b and d S/o and c D/o Late Shri W.J. Benet R/o Takhatpur chiritian P.S. & Tah. Takhatpur Dist Bilaspur (C.G.)
3. Vilitif Benet aged 64 Years
4. Advin Benet aged 62 years
5. Ku. Pramila Benet aged about 60 years
6. Ku. Pratikanta Benet aged 58 aboute
7. Vinment Benet aged 56 years
8. Renu Bala Benet aged 54 years
9. Pushpa Sarita Benet aged 52 years Sr.No. 3 to 9 All S/o Late E.Benet All resident of takhatpur Tah.Takhatpur Dist. Bilaspur (C.G.)

V/s

Respondent :- (1) State of Chhattisgarh Through : Collector
(2) Shekh Shahjada aged about 55 years S/o Hazi shekh siddik R/o Daupara Mungeli Tah.Mungeli Dist. Bilaspur (C.G.)

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C.S.E.M. to G. BILASPUR

Petition against order of the Civil Judge class - 1 Mungeli Dist. Bilaspur (C.G.) (Shrimati Kiran Dwivadi) dated12-04-2005 in civil suti No.78-A/99

PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

XI-HC-78

(84)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 4290/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	12.9.2005 Shri Anup Kumar Sharma, counsel for the petitioner. Shri R.R. Sinha, Panel Lawyer for the State. The petitioners have preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 12.4.2005 whereby learned Civil Judge Class-I, Mungeli has rejected the application of the petitioners herein filed under Order 13 Rule 10 of the CPC for summoning the record and also the application filed under Order 6 Rule 17 of the CPC for amendment of the plaint. Brief facts leading to filing of this writ petition are that the petitioners herein filed a civil suit for declaration and possession in respect of the land mentioned in Paragraph 1 of the plaint on the ground that the disputed land was purchased by the father of the petitioners on 30.3.1951 from one Jagannath Prasad Verma, who was Malguzar of Village Daupara and was the owner of land in question. After the purchase of said land the possession was received by the father of petitioners and thereafter, said land remained in possession of the petitioners' father and the petitioners themselves upto 45 years. As the petitioners were residing outside the village, therefore, petitioner No.1 was given rights by other petitioners to look after the said land. Petitioner No.3 constructed a house on the said land in the year 1958, which is still existing and same was occupied from time to time by family members of the petitioners. As the petitioners' family members were residing at other places and they were not able to look after the land & house, taking advantage of that situation, under a	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

conspiracy the defendant No.2/respondent No.2 herein got the said land declared as Nazul land and also got it entered in his name on 30.12.1988 and trespassed over it.

After issuance of summons, the respondents herein filed their written statements, issues were framed arising out of the pleadings of the parties and thereafter, the plaintiffs/petitioners herein adduced and closed their evidence.

The above suit was filed in the year 1999, issues were framed on 14.9.2002, the petitioners closed their evidence on 18.11.2004 and now the matter is fixed for evidence of the defendants.

I have heard learned counsel for the petitioners.

Learned counsel for the petitioners submitted that as the suit was filed before the amendment in Order 6 Rule 17 of the CPC in the year 2002 , therefore, the proviso to Order 6 Rule 17 does not apply and by way of the amendment the petitioners herein wanted to prove that defendant No.2 himself once upon a time had admitted that the land in question belonged to the petitioners and that is why he approached the petitioners for purchase of the land. The petitioners' father had executed a Will in respect of the disputed land.

Learned trial Court rejected the application on the ground that suit is pending since 1999, thereafter the plaintiffs have closed their evidence and by the instant amendment application the nature of suit will be changed, therefore, the amendment cannot be permitted. As far as the application filed under Order 13

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rule 10 of the CPC is concerned, the petitioners were entitled to file copies of record for which they were asking for summoning.

Having heard learned counsel for the petitioners and having considered the facts and circumstances of the case, I am of the opinion that the order of the trial Court is not without jurisdiction. The trial Court has rightly held that the public record which the petitioners wanted to get summoned under Order 13 Rule 10 of the CPC, a certified copy thereof could have been filed by them but it has not been done, therefore, the application is not maintainable. As far as the amendment is concerned, now the petitioners after closing their evidence wanted to insert two new grounds which have been mentioned in the application but in the application the petitioners have not mentioned that how they were not able to bring these facts on record earlier.

In view of the above, I am of the opinion that the petitioners have not been able to bring out a case for invoking extraordinary jurisdiction under Article 227 of the Constitution of India by interfering with the impugned order. Therefore, the petition is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan